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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

JOHN PERRY,
Plaintiff,
vs.
HUNT & HENRIQUES,
Defendant.
Case No.: 2:10-cv-03976-JHN-PJW
NOTICE OF MOTION TO DISMISS
WITH PREJUDICE
Date: May 2, 2011 at 2:00 pm
Location: Courtroom 790

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD: Notice Motion

NOTICE IS HEREBY GIVEN that on Monday, May 2, 2011 at 2:00PM before the Honorable Jacqueline H. Nguyen, 255 E. Temple Street, courtroom 790, Plaintiff will present his Motion to Dismiss. Plaintiff's Motion is based on this Notice, the Memorandum of Points and Authorities.

RESPECTFULLY SUBMITTED,

DATED: March 25, 2011

KROHN & MOSS, LTD.

By: /s/ Ryan Lee
Ryan Lee

Attorney for Plaintiff

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10

11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **EASTERN DIVISION**

14 JOHN PERRY,) **Case No.: 2:10-cv-03976-JHN-PJW**
15)
16 Plaintiff,) **MOTION TO DISMISS WITH**
17) **PREJUDICE**
18 vs.)
19 HUNT & HENRIQUES,)
20)
21 Defendant.)
22

23 **MOTION TO DISMISS WITHOUT PREJUDICE**

24 Pursuant to Federal Rule of Civil Procedure 41(a)(2), Plaintiff, John Perry (“Plaintiff”),
25 hereby moves for an order dismissing Plaintiff’s verified Complaint with prejudice. This Motion
will be based on the following Memorandum of Points and Authorities.

26 **MEMORANDUM OF POINTS AND AUTHORITIES**

27 **I. INTRODUCTION**

28 Plaintiff filed his verified Complaint against Defendant on May 27, 2010. In his verified
29 Complaint, Plaintiff alleged that Defendant constantly and continuously placed collection calls to
30 Plaintiff in violation of the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. 1692, *et*

1 seq. On August 3, 2010, Defendant filed an Answer. Accordingly, Plaintiff now moves for
2 voluntary dismissal of his Complaint pursuant to Federal Rule of Civil Procedure 41(a)(2).

3 **II. LEGAL STANDARD**

4 If, as is the case here, the adverse party has served an Answer, dismissal is available to a
5 Plaintiff only upon order of the Court and upon such terms and conditions as the Court deems
6 appropriate. Fed.R.Civ.P. 41(a)(2). The trial court has considerable discretion in deciding
7 whether to allow the withdrawal of a claim with prejudice. *Wakefield v. N.Telcom, Inc.*, 769
8 F.2d 109, 114 (2nd Cir. 1985). “Generally...a voluntary dismissal under Rule 41(a)(2) will be
9 allowed if Defendant will not be prejudiced thereby.” *Id.* at 114. Here, Defendant will suffer no
10 legal prejudice if Plaintiff’s motion is granted.

11 **III. ARGUMENT**

12 Defendant will not be prejudiced if Plaintiff’s motion to dismiss is granted. “Factors
13 relevant to a court’s decision whether or not to grant a motion to dismiss with prejudice include
14 [1] plaintiff’s diligence in bringing the motion; [2] any “undue vexatiousness” on plaintiff’s part;
15 [3] the extent to which the suit has progressed, including the defendant’s effort and expense in
16 preparation for trial; [4] the duplicative expense of relitigation; and [5] the adequacy of
17 plaintiff’s explanation for the need to dismiss. *Zagano v. Fordham Univ.*, 900 F.2d 12, 14 (2d
18 Cir. 1990).

20 None of these factors warrant denying Plaintiff’s motion. Plaintiff was not dilatory in
21 bringing the motion. This instant motion was not made to harass or annoy, but instead to bring
22 the litigation to a conclusion without further expense on the part of Plaintiff or Defendant. This
23 has not been a protracted lawsuit; rather, Plaintiff brought suit for violations of the FDCPA in
24 good faith. Further, Plaintiff received a meet and confer letter from Defendant on March 23,
25

1 2011 requesting Plaintiff dismiss his claim. Plaintiff has reviewed the discovery that has been
2 completed to date, and has elected to voluntarily dismiss with prejudice his complaint. Because
3 Plaintiff has brought his instant motion in a timely manner, and dismissal will not prejudice
4 Defendant, Plaintiff's Motion to Dismiss with Prejudice should be granted.

5 **IV. CONCLUSION**

6 For the foregoing reasons, Plaintiff respectfully requests that the Court dismiss this action
7 against Defendant without prejudice.

8
9 RESPECTFULLY SUBMITTED,

10 DATED: March 25, 2011

11 KROHN & MOSS, LTD.

12 By: /s/ Ryan Lee

13 Ryan Lee

14 Attorney for Plaintiff